

DETAILED ACTION

Response to Arguments

1. Applicant's remarks filed 4/28/09 have been fully considered and entered.

Applicant's remarks regarding the rejection of claims 1-2 rejected under 35 U.S.C. 102(a) as being anticipated by Jarpenberg et al., US 2003/014464 are found persuasive. Specifically, the cited prior art does not anticipate the invention set forth in independent claim 1. As such, these rejections are hereby withdrawn. Claims 1-6,8-13, 15 and 16 are found allowable for reasons set forth herein below.

Election/Restrictions

2. Claims 1, 6 and 10 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(b), claims 5,9 and 16 directed to the process of making or using the allowable product, previously withdrawn from consideration as a result of a restriction requirement, are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because a claimed invention previously withdrawn from consideration under 37 CFR 1.142 has been rejoined, **the restriction requirement as set forth in the Office action mailed on 3/24/08 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the

provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Allowable Subject Matter

3. The following is an examiner's statement of reasons for allowance: Claims 1-6, 8-13, 15 and 16.

With regard to independent claim 1, the prior art does not teach the limitation of "the elastic members being arranged in the extensible portion avoiding the joints between the sheet materials and having both ends thereof fixed to the sheet materials and wherein "each of the two sheet materials forming a plurality of folds continuously running across a plurality of the elastic members".

With regard to independent claim 6, the prior art does not teach the limitations of "wherein the sheet materials being discontinuously bonded to each other in the extending direction of the elastic members and a direction perpendicular thereto to form a plurality of joint lines each composed of a plurality of joints in each of the two directions, the joint lines in the direction crossing the extending direction each have a ratio of a pitch P11 of arranging the fusion joints to a length L11 of the individual fusion joints ($P11/L11$) ranging from 1.05 to 80, and the pitch P11 of arranging the fusion joints is 1 to 40 mm, at least two of the elastic members being disposed along the joint lines in the extending direction to overlap each of the joints composing the respective joint lines and fixed between the sheet materials at the individual joints, and the sheet materials each forming folds between the joint lines in the direction perpendicular to the extending direction".

With regard to independent claim 10, the prior art does not teach the limitations of "wherein the two sheet materials being partly bonded to each other to form joints, the joints lining up to make joint lines in a direction crossing the extending direction of the elastic members, a part of the joint lines and another part of the joints being different in positions of the joints making up each joint line in the direction crossing the extending direction, the ratio of the pitch P11 of the fusion joints in the individual joint lines to the length L11 of the individual fusion joints in the joint lines ($P11/L11$) ranges from 1.05 to 80, and the pitch P11 of the fusion joints is 1 to 40 mm, the elastic members being each fixed between the sheet materials at least part of the joints, and the sheet materials each forming folds between every two adjacent joint lines".

Claims 2-6, 8-9, 11-13, 15 and 16 depend either directly or indirectly from independent claims 1, 6 and 10.

An updated art search did not produce any new substantial art for which to base a rejection and presently no motivation exists to combine references to form an obviousness type rejection.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYNDA M. SALVATORE whose telephone number is (571)272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hendricks Keith can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

May 11, 2009
Art Unit 1794

/Lynda Salvatore/
Primary Examiner

Serial Number



Application No.

10/569,204

Applicant(s)

ANDO ET AL.

Examiner

LYNDA M. SALVATORE

Art Unit

1794